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SUPERIOR COURT  
STEVENS COUNTY, WA

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF STEVENS**

JOHN DOES 1-5, individuals and residents  
of Stevens County, Washington; et al.,  
Plaintiff,

vs.

JAY INSLEE, in his official capacity as  
Governor of Washington; ROBERT  
FERGUSON, in his official capacity as  
Attorney General of Washington, and BRAD  
MANKE, in his official capacity as Sheriff  
of Stevens County;

Respondents.

No. 23-2-00092-33

RESPONSE TO PLAINTIFFS' MOTION FOR  
TEMPORARY RESTRAINING ORDER and  
PRELIMINARY INJUNCTION

**I. INTRODUCTION**

Plaintiffs request a Temporary Restraining Order to prevent the enforcement of the provisions of ESHB 1705 specifically as it amends RCW 9.41.190(1)(d); RCW 9.41.325; RCW 9.41.326; and RCW 9.41.327.

Respondent in his official capacity as Sheriff of Stevens County has sworn an oath to "support the constitution of the United States and the Constitution and laws of the State of Washington, and that [Respondent] will faithfully and impartially perform and discharge the duties of the office . . ."

Respondent in his official capacity recognizes the operative phrases "Shall not be infringed" and "Shall not be impaired" from the US Constitution and State Constitution are both very strongly

1 worded phrases and leaves no room for doubt. There is nothing ambiguous or vague about either  
2 phrase. This Great State recognizes that the right to bear arms is a fundamental right.

3 The term ghost gun is an emotionally charged name to make certain firearms sound scary.  
4 The legislature defined the guns as untraceable firearms. They are privately made firearms. Most  
5 are made by honest, hardworking, law-abiding citizens. They are made for a myriad of reasons; long  
6 distance shooting, hunting, fun, defense and others. The person who made it can tell you where they  
7 got every part. They can tell you why they selected the part. Which parts are hand made and which  
8 parts come from which company. Whether or not they are traceable is irrelevant as they were all  
9 made as an exercise of the right to bear arms. The vast majority of the privately made firearms are in  
10 the possession of law abiding citizens, not criminals. The regulations enacted by ESHB 1705 will  
11 affect hundreds if not thousands of law-abiding citizens in Stevens County. The legislature stated  
12 the basis for the legislation is to aid law enforcement in criminal investigations. The Stevens County  
13 Sheriff's Office is unaware of any current or past criminal investigation which would have been  
14 solved with a serial number added to a privately manufactured firearm. There is no evidence that  
15 requiring the serialization of privately made firearms will reduce access to firearms by criminals.

16 Some argue that the government requiring an individual to serialize their home-made arms  
17 is a minor impairment. It only costs a few dollars and takes a small amount of time. They also ask  
18 "why would a law-abiding person need arms that are not traceable?"

19 The answer is simple, the constitutions say Shall not Impair and Shall not Infringe. They do  
20 not say may impair or may infringe as long as it is only a little. Additionally, it is not a minor  
21 infringement as the law threatens citizens with fines and criminal liability.

22 This bill with the statutes that are amended/enacted infringe and impair on law abiding  
23 citizens right to bear arms.  
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## II. LEGAL BASIS FOR TRO

Injunctive relief is granted or withheld at discretion of trial court, and trial court's decision exercising that discretion will be upheld unless it is based upon untenable grounds, is manifestly unreasonable, or is arbitrary. *Brown v. Voss* (1984) 38 Wash.App. 777, 689 P.2d 1111, review granted, reversed on other grounds 105 Wash.2d 366, 715 P.2d 514. In order to obtain injunctive relief, the plaintiff must establish (1) that he or she has a clear legal or equitable right, (2) that he or she has a well grounded fear of immediate invasion of that right by the one against whom the injunction is sought, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury. See, e.g., *Washington Federation of State Employees, Council 28, AFL-CIO v. State*, 99 Wash. 2d 878, 665 P.2d 1337 (1983).

### CLEAR LEGAL RIGHT

Plaintiffs state the basis for their legal right arises from the right to bear arms as guaranteed in the Second amendment of the US Constitution and Article 1 Section 24 of the Washington state constitution. The Second Amendment of the constitution of the United States provides that “[a] well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.” The Washington Constitution, Article I, Section 24 declares: “The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired. ...” The courts define arms protected by Art. I sec. 24 as “instruments that are designed as weapons traditionally or commonly used by law abiding citizens for the lawful purpose of self-defense . . .” *City of Seattle v. Evans* (2015) 184 Wash.2d 856, 366 P.3d 906, certiorari denied 137 S.Ct. 474, 196 L.Ed.2d 384. The law at issue defines Untraceable firearm as “any firearm manufactured after July 1, 2019, that is not an antique firearm and that cannot be traced by law enforcement by means of a serial number affixed to the firearm by a federal firearms manufacturer,

1 federal firearms importer, or federal firearms dealer in compliance with all federal laws and  
2 regulations. RCW 9.41.010.

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4 **WELL GROUNDED FEAR**

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6 The RCW provide penalties for any person who possess, manufactures, assembles receives  
7 or transfers untraceable firearms to be subject penalties which include: a monetary penalty of \$500;  
8 misdemeanor criminal charge; and/or a gross misdemeanor criminal charge. RCW 9.41.326. The  
9 penalties are in effect as of March 10, 2023. *Id.*

10 **ACTUAL AND SUBSTANTIAL INJURY**

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12 Neither statute nor civil rules require showing that irreparable harm has actually been  
13 sustained before injunction may be obtained where adverse party has been given notice. *County of*  
14 *Spokane v. Local No. 1553, American Federation of State, County and Mun. Employees, AFL-CIO*  
15 *(1995) 76 Wash.App. 765, 888 P.2d 735.* When an individual is subject to such a threat, an actual  
16 arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law. *Steffel v.*  
17 *Thompson, 415 U.S. 452, 459, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974)* (“[I]t is not necessary that  
18 petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that  
19 he claims deters the exercise of his constitutional rights”); see also *MedImmune, Inc. v. Genentech,*  
20 *Inc., 549 U.S. 118, 128–129, 127 S.Ct. 764, 166 L.Ed.2d 604 (2007)* (“[W]here threatened action by  
21 government is concerned, we do not require a plaintiff to expose himself to liability before bringing  
22 suit to challenge the basis for the threat”). Instead, we have permitted pre-enforcement review under  
23 circumstances that render the threatened enforcement sufficiently imminent. Specifically, we have  
24 held that a plaintiff satisfies the injury-in-fact requirement where he alleges “an intention to engage  
25 in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute,  
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1 and there exists a credible threat of prosecution thereunder.” *Babbitt v. Farm Workers*, 442 U.S.  
2 289, 298, 99 S.Ct. 2301, 60 L.Ed.2d 895 (1979).

### 6 III. MERITS OF THE CASE

#### 7 STANDARD OF REVIEW

9 The standard of review on constitutional questions under Article I, Section 24 is whether the  
10 statute is “reasonably necessary to protect public safety or welfare, and substantially related to  
11 legitimate ends sought.” *State v. Jorgenson*, 179 Wash. 2d 145, 156, 312 P.3d 960, 964 (2013).  
12 *Jorgenson* is applicable as the court conducts a *Gunwall* analysis. A *Gunwall* analysis is a list of  
13 “nonexclusive neutral criteria are relevant in determining whether, in a given situation, the  
14 Washington State Constitution should be considered as extending broader rights to its citizens than  
15 the United States Constitution.” *State v. Gunwall*, 106 Wash. 2d 54, 58, 720 P.2d 808, 811 (1986).  
16 The court found under the *Gunwall* analysis that art. I, section 24 should be read independently of  
17 its federal counterpart and the “reasonably necessary and related to legitimate ends” test is  
18 appropriate based on *stare decisis*. The review does not end with that analysis.

19 As the constitutionality of the statute has been challenged under the Second Amendment.  
20 The Second Amendment has been incorporated into the State through the Fourteenth Amendment.  
21 Additionally, the court found in *Jorgenson* that art I. section 24 should be read independently of its  
22 federal counterpart, the court will need to make an independent analysis under the Second  
23 Amendment.

24 Under the Second Amendment, “[T]o justify a firearm regulation the government must  
25 demonstrate that the regulation is consistent with the Nation's historical tradition of firearm  
26 regulation. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 213 L. Ed. 2d 387, 142 S. Ct. 2111,  
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1 2117 (2022). For most statutes, the “party challenging a statute's constitutionality bears the heavy  
2 burden of establishing its unconstitutionality.” *Pierce County II*, 159 Wash.2d at 27, 148 P.3d 1002  
3 (quoting *Larson v. Seattle Popular Monorail Auth.*, 156 Wash.2d 752, 757, 131 P.3d 892 (2006)).  
4 However, in certain cases such as freedom of speech the burden shifts to the State to justify the  
5 restriction on speech. *Ino Ino, Inc. v. City of Bellevue* (1997) 132 Wash.2d 103, 937 P.2d 154,  
6 amended 943 P.2d 1358, certiorari denied 118 S.Ct. 856, 522 U.S. 1077, 139 L.Ed.2d 755.

7 Here, the *Bruen* Court has clearly shifted the burden of demonstrating the regulations on  
8 arms are consistent with history and tradition to the Government. As the first regulations requiring  
9 serialization of firearms were enacted in the late 1960’s. *Gun Control Act of 1968*. Those  
10 regulations only apply to firearms entering commerce. *Id.* The Government cannot justify a tradition  
11 of regulating serial numbers on privately manufactured firearms because, there is no tradition of  
12 requiring privately manufactured firearms to be serialized in this state or in this country. As such the  
13 challenged statutes should fail to pass constitutional scrutiny.

#### 14 APPLICATION

15 Here, the definition of untraceable firearm broadly encompasses both pistols and rifles  
16 which are commonly used by law abiding citizens for the purpose of self-defense. Plaintiffs have  
17 stated they own those weapons, it would be disingenuous to state Plaintiffs lack a clear legal right.

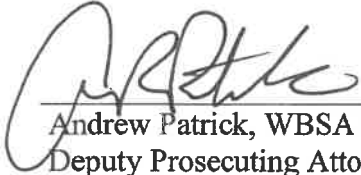
18 The Respondents in their official capacity all have the legal authority to enforce or cause the  
19 RCW to be enforced against the Plaintiffs resulting in a well-grounded fear of being charged with a  
20 misdemeanor or gross misdemeanor. The threat of criminal prosecution is an actual and substantial  
21 injury.

22 While this court does not have to take the merits of the case into consideration for injunctive  
23 relief, the Plaintiffs case has merit under States intermediate scrutiny as the regulation will burden a  
24 significantly larger amount of law-abiding citizens than the number of crimes, if any, that will be  
25 solved with the serialization of those arms. However, the Plaintiffs will likely and should succeed  
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1 on the Second Amendment challenge as the Government cannot demonstrate any history or  
2 tradition of regulating serial numbers on privately manufactured firearms.

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4 For any and all of the reasons stated above BRAD MANKE in his official capacity of Sheriff of  
5 Stevens County stipulates to a Temporary Restraining Order and Stipulates to a Preliminary  
6 injunction.

7 Respectfully submitted this the 29th day of March, 2022.  
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12 Andrew Patrick, WBSA # 56645  
13 Deputy Prosecuting Attorney  
14 Stevens County Prosecutors Office  
15 For BRAD MANKE in his official  
16 capacity as Stevens County Sheriff  
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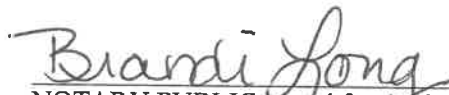


1 Will McGinty, Assistant Attorney General: [william.mcginty@atg.wa.gov](mailto:william.mcginty@atg.wa.gov)  
 2 Spencer Coates, Assistant Attorney General: [spencer.coates@atg.wa.gov](mailto:spencer.coates@atg.wa.gov)  
 3 Amy Hand, Paralegal: [amy.hand@atg.wa.gov](mailto:amy.hand@atg.wa.gov)  
 4 Sara Cearley, Paralegal: [sara.cearley@atg.wa.gov](mailto:sara.cearley@atg.wa.gov)  
 5 Christine Truong, Legal Assistant: [christine.truong@atg.wa.gov](mailto:christine.truong@atg.wa.gov)  
 6 Vyna Nguyen, Legal Assistant: [vyna.nguyen@atg.wa.gov](mailto:vyna.nguyen@atg.wa.gov)  
 7 Electronic Mailing Inbox: [comCEC@atg.wa.gov](mailto:comCEC@atg.wa.gov)  
 8 Office of the Governor: [serviceATG@atg.wa.gov](mailto:serviceATG@atg.wa.gov)  
 9 Austin Hatcher, Attorney for Petitioners [austin@smfjb.org](mailto:austin@smfjb.org)

10 Dated this 29<sup>th</sup> day of March, 2023.

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 12   
 13 Michele Lembcke

14 SIGNED AND SWORN to (or affirmed) before me this 29<sup>th</sup> day of March, 2023.

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 16   
 17 Brandi Song  
 18 NOTARY PUBLIC in and for the State  
 19 of Washington. Commission expires:  
 20 4.19.2025

AFFIDAVIT OF SERVICE - 2	STEVENS COUNTY PROSECUTING ATTORNEY 215 S. Oak, Room 114 COLVILLE, WA 99114 (509) 684-7500 FAX (509) 684-7589
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